

10
ORIGINAL

ALLEN & HAROLD
A PROFESSIONAL LIMITED LIABILITY COMPANY
INCLUDING A PROFESSIONAL CORPORATION

ROBERT G. ALLEN, P.C.
DOUGLAS W. HAROLD, JR.
ROBERT L. GALBREATH

W. BRUCE WEINROD*
OF COUNSEL

*ADMITTED IN D.C. ONLY

10610-A CRESTWOOD DRIVE
POST OFFICE BOX 2126
MANASSAS, VIRGINIA 22110

(703) 361-2278
FAX (703) 361-0594

SUITE 200
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

5413 MAIN STREET
STEPHENS CITY, VIRGINIA 22655

RECEIVED

DEC - 8 1994

December 8, 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

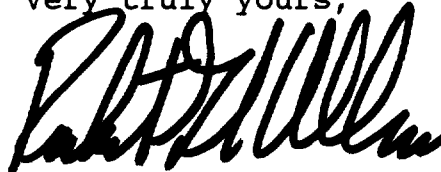
Re: Holmdel Telecommunications Group, Inc.
Request for Pioneer's Preference
FCC File No. RM-7912
A&H #13115

Dear Mr. Caton:

On behalf of Holmdel Telecommunications Group, Inc. ("HTG"), pursuant to Section 1.402 of the Commission's Rules, there are submitted herewith an original plus four (4) copies of a Request for Pioneer's Preference. The materials submitted herewith are filed in connection with the Petition for Rulemaking (FCC File No. RM-7912) filed by Crescomm Transmission Services, Inc., on December 12, 1991.

Should there be any questions regarding the attached materials, please contact the undersigned.

Very truly yours,



Robert G. Allen

RAH:rah
Attachments

No. of Copies rec'd
List ABCDE

044
OET

ORIGINAL
RECEIVED

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

DEC - 8 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Matter Of

AMENDMENT TO PART 80 OF THE
COMMISSION'S RULES

For An Allocation Of Frequencies
For Digital Shipboard Earth Stations

)
)
)
)
)
)
)

FCC File No. RM-7912

To: The Commission

REQUEST FOR PIONEER'S PREFERENCE

HOLMDEL TELECOMMUNICATIONS GROUP, INC. ("HTG"), by counsel, hereby requests grant of a Pioneer's Preference pursuant to Section 1.402 of the Commission's Rules, for the issuance of licenses for Digital Shipboard Earth Stations ("DSES") under the proposed new rules requested in the Petition for Rulemaking referenced above, as filed with the Commission on December 12, 1991. Under this rule proposal, Digital Shipboard Earth Stations would be licensed to utilize C-Band and/or Ku-Band (broadband) frequencies to communicate to and from locations in Ocean, Sea and Coastal areas within the "footprint" of Satellite Systems, with Fixed and Temporary-fixed Satellite Earth Stations.

The requested Pioneer's Preference would be for the grant of licenses for DSES stations on ships operating in Ocean, Sea and Coastal areas within the "footprint" of licensed Satellite Systems.

In support of this Request, the following information is shown:

1. On December 12, 1991, Crescomm Transmission Services, Inc. ("Crescomm") filed a Petition for Rulemaking in the captioned proceeding seeking the promulgation of new regulations to be added to Part 80 of the Commission's Rules, setting aside frequency spectrum for the provision of DSES broadband services. On January 15, 1992, Crescomm filed a Request For Pioneer's Preference, PP-34 in RM-7912, ("Crescomm Request") in which it sought a pioneer's licensing preference for DSES stations on ships operating in Ocean, Sea and Coastal areas within the "footprint" of licensed Satellite Systems. The Crescomm Request is still pending.¹

2. On November 9, 1994, acting pursuant to Commission authority², Crescomm consummated the assignment of its above-referenced Part 5 license to Holmdel Telecommunications Group, Inc. ("HTG"). On that same date, Crescomm and HTG entered into an operating agreement by which HTG, as Commission licensee, provides certain operational services on an exclusive basis to Crescomm, which remains the owner of the physical plant used to provide such services. Crescomm continues to market and develop broadband maritime services. However, it relies exclusively on HTG for all facilities employed in providing them.

3. HTG's shareholder ownership and control rests with the same principals who owned and controlled Crescomm at the time that the Crescomm Request was filed. HTG stands as the successor-in-interest to Crescomm as licensee of the facilities being used

¹Crescomm has indicated its willingness to dismiss its Request For Pioneer's Preference in the event the Commission accepts the instant Request. See, Footnote 5, below.

²File No. 4260-EX-AL-94, issued September 22, 1994.

experimentally in the provision of the broadband maritime service. The principals of HTG are the parties most directly responsible for the early successful experimentation with broadband satellite maritime communications undertaken by Crescomm. Indeed, these same principals are the ones responsible for underwriting Crescomm's broadband maritime experimentation dating back to the year 1987. Therefore, it is the HTG principals who were the architects and underwriters of the new and innovative use of broadband shipboard technology formerly licensed to Crescomm.³ Further, given the exclusive nature of its operating agreement with Crescomm, and the extensive operating experience of these HTG principals in the broadband maritime service, HTG is in a good position to demonstrate the technical feasibility of the new broadband service. It may do so through the submission of appropriate showings or histories regarding the various experiments underwritten by HTG principals during their many years of service as principals of Crescomm. In view of the foregoing, HTG is clearly eligible for consideration to receive a pioneer's preference in connection with the permanent provision of broadband maritime satellite services. Therefore, this HTG Request should be accepted by the Commission.

4. While the captioned rulemaking has been pending for almost three years, no Notice of Proposed Rulemaking ("NPRM") has yet been issued by the Commission. Therefore, in accordance with Section 1.402(a) of the Rules, HTG may file the instant Request for Pioneer's Preference without the filing of a separate Petition for Rulemaking.

³While Crescomm is no longer the licensee of the Part 5 facilities through which HTG provides broadband service, it has stated that it remains "...involved in marketing and research activities associated with broadband maritime telecommunications services..." and that it is "...vitally interested in obtaining early action by the Commission on its Petition [for Rulemaking]..." captioned above. See, Supplement To Petition For Rulemaking and Request For Expedited Action, filed by Crescomm on November 30, 1994.

This Request is timely filed since it is necessitated by events having only recently occurred.⁴ Finally, the extensive period of pendency of the Crescomm Petition without obtaining Commission action or without even the issuance of an NPRM, makes all the more reasonable this request, which simply seeks Commission acknowledgement of a form-of-entity change which has occurred during the term of the long wait for administrative action. Further, acceptance of this Request is in the public interest since, it would effectively replace the Crescomm Request, thereby adding no administrative burden to the Commission or its staff.⁵

5. To sum, HTG's Request for Pioneer's Preference should be accepted because: 1) the shareholder-principals of HTG are the same as those of Crescomm at the time the Crescomm Pioneer's Preference request was filed; 2) the HTG shareholders are the same as those responsible for undertaking and underwriting much of Crescomm's early broadband maritime satellite experimentation (dating back to 1987); 3) HTG has entered into an exclusive operating agreement with Crescomm by which the former provides operating services for the latter; 4) HTG is the successor-licensee to Crescomm in the provision of on-going broadband maritime experimentation; 5) the Commission has waited three years without taking any action whatsoever on either Crescomm's Petition or the Crescomm Request and the instant Request simply seeks Commission acknowledgement of a form-of-entity change which has occurred during this period; 6) no NPRM has yet

⁴As noted supra., at Paragraph 2, consummation of the assignment of Crescomm's Part 5 broadband experimental license Call Sign KI2XEE took place on November 9, 1994.


⁵Crescomm has indicated through correspondence with HTG (See Exhibit A), that it is willing to request the dismissal of the Crescomm Request in the event the Commission accepts the filing of the instant Request by HTG.

been issued in the captioned proceeding; 7) this Request is precipitated by an event having very recently occurred; and, 8) Crescomm has indicated its willingness and intent to seek the dismissal of its own pending Request for Pioneer's Preference in the event the Commission accepts the instant Request for filing.

WHEREFORE, in view of the foregoing, Holmdel Telecommunications Group, Inc., respectfully submits this Request for Pioneer's Preference and requests a grant under Section 1.402 of the Rules of such a Preference in the issuance of new licenses for the areas served by such stations under the proposed new Rules.

Respectfully submitted,

HOLMDEL TELECOMMUNICATIONS GROUP, INC.

By: _____

Robert G. Allen
Robert A. Harris, II

Its Attorneys

Allen & Harold, P.L.C.
10610A Crestwood Drive
P.O. Box 2126
Manassas, Virginia 22110
(703) 361-2278

December 8, 1994

Holmdel Telecommunications Group, Inc.
Request For Pioneer's Preference

Exhibit A

EXHIBIT A

Crescomm

Transmission Services, Inc.
389 Passaic Avenue
Suite 201
Fairfield, NJ 07004
201-882-4185
FAX 201-575-1191
Telex #642776

November 30, 1994

Mr. Gordon Robertson, President
HOLMDEL TELECOMMUNICATIONS GROUP, INC.
200 Telegraph Hill Road
Holmdel, New Jersey 07733

VIA FACSIMILE (908-739-2978)

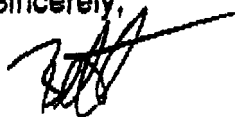
Dear Gordon:

This is to confirm Crescomm's willingness to seek the dismissal of its currently pending application for pioneer's preference, PP-34 in RM-7912, in the event the Federal Communications Commission accepts the application for pioneer's preference to be filed by Holmdel Telecommunications Group, Inc. ("HTG").

It is my understanding that you will be filing such an application immediately looking toward the provision of broadband maritime satellite services on a permanent basis. HTG will then be providing its licensed broadband maritime facilities to Crescomm under terms similar to those contained in our Operating Agreement of November 9, 1994.

You are authorized to attach a copy of this letter to HTG's application.

Sincerely,



Bill LaShell

CERTIFICATE OF SERVICE

I, Valerie M. Nealey, a secretary in the law firm of Allen & Harold, P.L.C., hereby certify that I have this 8th day of December, 1994, caused to be delivered via 1st Class Mail, postage prepaid, copies of the foregoing "Request for Pioneer's Preference" to the following:

* Richard M. Smith, Chief
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

* Rodney Small
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W., Room 7332
Washington, D.C. 20554

Robert S. Koppel, Esq.
James T. Roche, Esq.
IDB Communications Group, Inc.
Suite 460
15245 Shady Grove Road
Rockville, MD 20850

Henry Goldberg, Esq.
Joseph A. Godles, Esq.
Goldberg, Godles, Weiner & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
Counsel for PanAmSat, L.P.

Sheila Mellody
GTE Spacenet Corporation
1700 Old Meadow Road
McLean, VA 22102

Sambran Sandoval, President
National Spectrum Managers Association, Inc.
P.O. Box 8378
Denver, CO 80201

William Roughton, Esq.
Lawrence W. Katz, Esq.
Bell Atlantic Telephone Companies
1710 H Street, N.W.
Washington, D.C. 20006

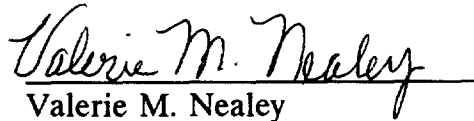
Albert Shuldiner, Esq.
Nixon, Hargrave, Devans & Doyle
One Thomas Circle
Suite 800
Washington, D.C. 20005
Counsel for Qualcomm, Inc.

William A. Star
Vice President
LDI Leasing Dynamics, Inc.
11279 Cornell Park Drive
Cincinnati, Ohio 45242

Cheryl Lynn Schneider, Esq.
Comsat Mobile Communications
22300 Comsat Drive
Clarksburg, MD 20871

Robert Goodman
Chairman and Chief Executive Officer
CruisePhone, Inc.
500 Cypress Creek Road West
Suite 260
Ft. Lauderdale, FL 33309

Victor J. Toth, Esq.
Law Offices of Victor J. Toth, P.C.
2719 Soapstone Drive
Reston, VA 22091
Counsel for CruiseCom International


Valerie M. Nealey

*Courtesy Copy Via Hand Delivery